Public Prosecutor v Tan Teck Hin

HIGH COURT (SINGAPORE) — MAGISTRATE'S APPEAL NO 329/90/01
CHUA J
4 FEBRUARY 1991

Statutory Interpretation — Amending legislation — Effect of — What is a second or subsequent offence

Road Traffic — Drunken driving — Punishment for second and subsequent offence — Interpretation

Criminal Procedure — Second or subsequent offence — Effect of amending section — What constitutes a second offence

Constitutional Law — Retrospective punishment — What constitutes a heavier sentence — What constitutes applying a heavier punishment

On 30 July 1990 the accused had pleaded guilty to a charge under s 67(1) of the Road Traffic Act (Cap 276, 1985 Ed) of drunken driving. He was fined $1,000 in default three months' imprisonment and disqualified from driving all classes of vehicles for four years. On 5 March 1990 the accused had pleaded guilty to the then existing s 67(1) for drunken driving and was fined $1,000 in default three months' imprisonment and disqualified from driving all classes of vehicles for three years.

Section 67(1) had been repealed by the Road Traffic (Amendment) Act 1990 on 2 April 1990 and re-enacted to provide for heavier punishment in the case of a second or subsequent conviction. Before the amendment, the punishment for a second or subsequent offence was a fine not exceeding $2,000 or imprisonment for a term not exceeding 12 months or both.

The question was whether the conviction on 30 July 1990 was a second conviction under s 67(1).

Held, dismissing the appeal:

(1) A distinction should be drawn between an amendment by deletion or insertion of words from or into existing legislation and an amendment by the repeal of the whole section and substituting a new section.

(2) The re-enacted s 67(1) is in fact a new section, which provided for a heavier punishment.

(3) To treat the accused as a second offender would be to apply the re-enacted section to him retrospectively and would be contrary to art 11(1) of the Constitution.

(4) The accused's conviction under the re-enacted s 67(1) on 30 July 1990 must be treated as his first conviction under this section.

Legislation referred to
Constitution of the Republic of Singapore art 11(1)
Road Traffic Act (Cap 276, 1985 Ed) s 67(1)

Lau Wing Yum (Deputy Public Prosecutor) for the appellant.
Wee Pan Lee for the respondent.

Cur Adv Vult

Chua J: This is an appeal by the public prosecutor against the sentence imposed by the district court on 30 July 1990, following the respondent's plea of guilty to a charge under s 67(1) of the Road Traffic Act (Cap 276, 1985 Ed) ('the Act') of driving a motor vehicle whilst under the influence of drink and sentenced to a fine of $1,000 in default three months' imprisonment and disqualified from driving all classes of vehicles for four years.

The public prosecutor submits that the sentence is manifestly inadequate.

The respondent also pleaded guilty to two other charges:

(a) charge under s 43(3) of the Act for driving a motor vehicle whilst disqualified from holding or obtaining all classes of driving licence for a period of three years and was sentenced to three months' imprisonment and disqualified for six years;
(b) charge under s 3(1) of the Motor Vehicles (Third Party Risks and Compensation) Act (Cap 189, 1985 Ed) and was fined $500 in default three months' imprisonment and disqualified for one year.

On 5 March 1990, the respondent was convicted under s 67(1) of the Act for drunken driving and was fined $1,000 in default three months' imprisonment and disqualified from driving all classes of vehicles for three years.

When the respondent was convicted on 5 March 1990, it was under the then existing s 67(1) which provided:

> Any person who, when driving or attempting to drive a motor vehicle on a road or other public place, is under the influence of drink or of a drug to such an extent as to be incapable of having proper control of such vehicle, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months, and in the case of a second or subsequent conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 12 months or to both.

Section 67(1) was repealed by the Road Traffic (Amendment) Act 1990 (No 7 of 1990) (which came into force on 2 April 1990) and re-enacted and provides:

> 67(1) Any person who, when driving or attempting to drive a motor vehicle on a road or other public place, is under the influence of drink or of a drug to such an extent as to be incapable of having proper control of such vehicle shall be guilty of an offence and shall be liable on conviction to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for a term not exceeding 6 months and, in the case of a second or subsequent conviction, to a fine of not less than $3,000 and not more than $10,000 and to imprisonment for a term not exceeding 12 months.

The public prosecutor submits that as this is the respondent's second conviction under s 67(1) the respondent should have been sentenced by the district court, in addition to a minimum fine of $3,000, to a term of imprisonment not exceeding 12 months.

Although the elements of the offence created by the re-enacted s 67(1) are substantially the same as the elements of the offence under the repealed s 67(1), the punishment for the offence is not the same: the re-enacted section provides for a heavier punishment.

For a first offender, the punishment under the repealed section was 'a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months'. Whereas under the re-enacted section the punishment is a mandatory sentence of 'a fine of not less than $1,000 and not more than $5,000 or to imprisonment for a term not exceeding 6 months'.

For a second offender, the punishment under the repealed section was 'a fine not exceeding $2,000 or to imprisonment for a term not exceeding 12 months or to both'. Whereas under the re-enacted section the punishment is a mandatory 'fine of not less than $3,000 and not more than $10,000 and to imprisonment for a term not exceeding 12 months'.

Now is this a second conviction of the respondent under s 67(1)? Under the repealed section, the court had a discretion as to the punishment. Under the re-enacted section, the court has no discretion as to the punishment.

A distinction should be made between an amendment by deletion or insertion of words from or into an existing legislation, and an amendment by the repeal of the whole section and substituting therefor a new section. The re-enacted s 67(1) is in fact a new section.

Article 11(1) of the Constitution of the Republic of Singapore protects a person against retrospective criminal laws.

In my view the respondent was charged and convicted under the re-enacted s 67(1) for the first time, notwithstanding that he had been dealt with under the repealed s 67(1) once before on 5 March 1990.

To treat the respondent as a second offender under the re-enacted section is to apply the re-enacted section to him retrospectively. The words preceding the provision for punishment of a second or subsequent offender under the re-enacted s 67(1) are 'in the case of a second or subsequent conviction'. These words can only mean a second or subsequent conviction under the re-enacted s 67(1).

Appeal dismissed.

Solicitors: *Wee Tay & Lim.*

Reported by *S Surenthiraraj*

Bank of China v Asiaweek Ltd

HIGH COURT (SINGAPORE) — SUIT NO 1206 OF 1989
THEAN J
30 JANUARY 1991

Civil Procedure — Pleadings — Striking out — Defamation action — Whether filing of defence is frivolous, vexatious and an abuse of the process of court — Rules of the Supreme Court 1970, O 18 r 19

Tort — Defamation — Whether words complained off were defamatory in their natural and ordinary meaning — Whether an apology amounts to admission of defamation — Statutory defence — Whether requirements fulfilled — Defamation Act (Cap 75, 1985 Ed), s 7

On 18 June 1989, the defendant published a statement in a magazine stating that as a result of political repression in China, the Singaporean Chinese had made a run on the Bank of China's Singapore branch, and quoted the deputy general manager as saying that 'Up to last Thursday, a total of about US$75m was withdrawn, leaving the bank no alternative but to suspend business temporarily.' The plaintiff complained that the quoted words were defamatory, and on 23 July 1989 the defendant published an apology. When no settlement was reached on making amends, the plaintiff commenced an action in defamation against the defendant. Two defences were raised: firstly a bare denial that the words complained of were defamatory to the plaintiff or were understood to bear the meanings as alleged by the plaintiff or any other meaning defamatory of the plaintiff; and secondly, the statutory defence under s 7 of the Defamation Act. The plaintiff then applied to strike out the defence and enter judgment under O 18 r 19 of the Rules of the Supreme Court 1970 and under the inherent jurisdiction of the court. The registrar granted the application and gave the plaintiff leave to enter interlocutory judgment. The defendant appealed against this decision.

Held, dismissing the appeal:

(1) Striking out the whole of a defence to a claim for libel is an extraordinary step and is only allowed in plain and obvious cases. The present case is a plain and obvious case. The question whether a point is plain and obvious does not depend upon the length of time it takes to argue. Rather the question is whether, when the point has been argued, it has become plain and obvious that there can be but one result. There is not the slightest doubt here that the defence is wholly unsound and unsustainable, and striking it out will obviate the necessity for a trial.

(2) Of the two defences raised, on a careful examination of the pleadings and other documents, both these defences are manifestly unsustainable, frivolous and vexatious and a sham, and the raising of these defences appears to be a delaying strategy and in effect amounts to an abuse of the process of the court.

(3) As to whether the words were defamatory to the plaintiff, the natural and ordinary meaning of the words is to be determined by the court. The question is one purely of construction of the words, and the approach to be adopted in construing these words is to consider what meaning the words would convey to ordinary reasonable persons using their general knowledge and common sense. Such meaning is not confined to a literal or strict meaning of the words but includes any inferences or implications which could reasonably be drawn by such persons.